

Adopted Rule Amendment to §374.2. Detrimental Practice.

Please note that this is an ADOPTED amendment, but it will not be in effect until 6/1/2015, at which time, the adopted amendment to §374.2 will replace the current version of §374.2. Please [click this link](#) to view the current rule.

Introduction: The Texas Board of Occupational Therapy Examiners adopts an amendment to §374.2, concerning detrimental practice.

The amendment adds language that failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations is also practicing occupational therapy in a manner detrimental to the public health and welfare. The amendment also includes a grammatical revision.

§374.2. Detrimental Practice.

The Act, §454.301(a)(6) states “practiced occupational therapy in a manner detrimental to the public health and welfare,” which is defined but not limited to the following:

- (1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;
- (2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;
- (3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;
- (4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;
- (5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;
- (6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;
- (7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;

- (8) breaching the confidentiality of the patient/therapist relationship;
- (9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;
- (10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;
- (11) violation of Chapter 373 of this title (relating to Supervision);
- (12) advertising in a manner which is false, misleading, or deceptive;
- (13) failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt;
- (14) practicing in an unregistered occupational therapy facility which is not exempt;
- (15) failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care; or
- (16) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.